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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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In re J. A., a Person Coming Under  
the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

M. B.,

Defendant and Appellant.

C061786

(Super. Ct. No. JD227751)

Appellant M. B., father of the minor, appeals from the orders of the juvenile court entered at the six-month review hearing. (Welf. & Inst. Code,<sup>1</sup> §§ 366.21, subd. (e), 395.) He contends the order denying him placement of the minor with appellant must be reversed because there was no substantial evidence that such placement would be detrimental to the minor. We affirm.

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<sup>1</sup> All further statutory references are to the Welfare and Institutes Code.

## BACKGROUND

Only a brief recitation of the factual background is necessary to our resolution of this appeal.

Sacramento County Department of Health and Human Services (the department) filed a section 300 petition on behalf of the five-year-old minor on June 25, 2008, alleging mother had a substance abuse problem. Appellant, who lives in Missouri, was named as the "alleged" father. The minor was ordered detained and placed in a foster home. The court ordered reunification services for mother and appellant and ordered the department to initiate an Interstate Compact for the Placement of Children (assessment) for possible placement with appellant in Missouri.

In its November 2008 report, the department concluded that placement with appellant "at this time" would be detrimental to the minor. The department had been provided information regarding appellant's criminal history and past behavior. It recommended deferring consideration of placement with appellant depending on further investigation and on the results of the assessment, which it had not yet begun.

Appellant requested placement of the minor with him at the combined jurisdiction and disposition hearing on December 23, 2008. The juvenile court sustained the section 300 petition and adjudged the minor a dependent child. The court also ordered the removal of the minor from parental custody and granted appellant regular visitation with the minor.

Appellant appealed. He argued there was no substantial evidence that the minor would suffer detriment if placed with

him and, therefore, the juvenile court erred in failing to place the minor in his custody. We affirmed the juvenile court's order in an opinion filed on September 23, 2009. (Case No. C061144.)

A six-month review hearing was held on March 3, 2009. The department reported that mother was progressing well in her reunification services and the minor was having regular telephone contact with appellant. No progress, however, had been made in assessing appellant for possible placement. Missouri Child Protective Services had not provided the assessment. The department had not completed the criminal records search. Moreover, appellant had been unable to begin counseling in accordance with his reunification plan because the proper forms had not been submitted. Appellant was, however, willing to participate in services.

Appellant requested the juvenile court find that the department had not provided reasonable services. The juvenile court asked for clarification and received confirmation from appellant's counsel that appellant was seeking a finding of lack of reasonable services and not return of the minor. The juvenile court then found reasonable services had been provided to mother but not to appellant, and instructed the department that it needed to "step it up" with respect to appellant.

#### DISCUSSION

Appellant contends, as he did in his previous appeal, that there was no substantial evidence that the minor would suffer detriment if placed with him and, therefore, the juvenile court

erred in failing to place the minor in his custody. In making this argument, he repeats the analysis and argument he made in his previous appeal.

We rejected appellant's contention in his previous appeal, explaining that the juvenile court's finding was supported by the evidence. (Case No. C061144.) Our holding is law of the case.<sup>2</sup> (*People v. Stanley* (1995) 10 Cal.4th 764, 786-787.)

Under the law of the case doctrine, "'The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.'

[Citations.] . . . The doctrine applies to appellate determinations that the trial court's factual findings are supported by substantial evidence." (*Hanna v. City of Los Angeles* (1989) 212 Cal.App.3d 363, 376.)

Here, appellant made the same arguments in his previous appeal and we rejected them. Because the department did not provide reasonable services to appellant and made no progress in its investigation of appellant, no new substantive facts were made available for the juvenile court, or for this court, to

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<sup>2</sup> Because we affirm the orders of the juvenile court based on the law of the case, we need not address respondent's contention that appellant is precluded from raising the issue of substantial evidence due to his request in the juvenile court for a finding of no reasonable services rather than placement of the minor.

consider.<sup>3</sup> Based on the available facts, the juvenile court found placement of the minor with appellant to be detrimental. For the same reasons the evidence supported the juvenile court's finding at disposition, it supports the finding here.

We agree with the juvenile court, and appellant, that the department failed to provide reasonable services and timely investigate allegations regarding appellant. The remedy for the department's failure to follow through with its obligations is the finding of no reasonable services and the extension of time for services -- not placement of the minor with appellant to the minor's detriment.

DISPOSITION

The orders of the juvenile court are affirmed.

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ROBIE, J.

We concur:

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SCOTLAND, P. J.

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NICHOLSON, J.

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<sup>3</sup> Appellant had begun regular telephone contact with the minor since the disposition hearing. That fact alone, however, does not affect the detriment to placement analysis so as to circumvent the law of the case doctrine.